

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE NINTH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 15494 of 2004

Between:

Toddy Tappers Cooperative Society Group Chintal Basthi, Chintal Basthi,
Hyderabad, rep. by Smt.K. Sugunamma, W/o Late Pentaiah,

R/o Chintalbasthi, Hyderabad.

..... PETITIONER

AND

1. The Proh & Excise Superintendent, Cum Functional Registrar Toddy Tappers
Coop. Societies,
Hyderabad District, Narayanaguda, Hyderabad.

2. C.Ramulu, S/o. Balaiah, 55 years, NB Nagar,
Road No.12, Banjara Hills, Hyderabad.

3. P.Sai Baba Goud, S/o. P.Ramulu Goud,
38 years, Chintal Basti, Khairatabad, Hyderabad.

(Respondents 2 to 3 were impleaded as per orders in

W.P.M.P.No.20464 of 2004, dated 09-09-2004.)

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ of Mandamus, or any other appropriate writ, order or direction, declaring the Cr.No. B1/6082/2003/ESH, dt. 26-8-2004 of the respondent as illegal, arbitrary, against principles of natural justice contrary to law and set aside the same and further suspend the operation of Cr.No. B1/6082/2003/ESH, DT. 26-8-2004 of the respondent No.1.

Counsel for the Petitioner: Mr.D.Prakash Reddy, Senior Counsel for Mr.T.Amarnath Goud, Advocate.

Counsel for the Respondent No.1: GP for Prohibition & Excise

Counsel for the respondents 2 & 3 : Mr.C.V.Mohan Reddy for Sri N.Sridhar Reddy, Advocate.

The Court made the following :

THE HON'BLE MS. JUSTICE G.ROHINI

WRIT PETITION NO.15494 OF 2004

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ORDER :

The petitioner is a Toddy Tappers Co-operative Society registered under the provisions of the A.P. Co-operative Societies Act, 1964. All the members of the petitioner Society are tappers. The petitioner Society was issued a TCS licence by the Prohibition & Excise Superintendent, Hyderabad for group of shops which is being renewed from time to time and valid up to the end of March, 2007. On 30-11-2003 the members of the petitioner society elected a new managing committee headed by one Sri Y.Nageswara Rao as the President and five others as Directors. While so, the respondent herein issued a show-cause notice dated 04-03-2004 calling upon the managing committee of the petitioner society to show-cause why

the managing committee should not be superseded under Section 32 of the A.P. Co-operative Societies Act, 1964 (for short, 'the Act') on the ground of alleged irregularities in continuing the individuals who do not belong to the area of operation of the society as members in violation of Section 6 (cc) of the Act. The allegations include that Sri Y.Nageswara Rao, the President of the Society is not a resident of the area of operation of TCS, Chintal Basthi, and as such he is disqualified from being a primary member of the society. It was also alleged that 38 members shown in the annexure are the residents of Khairatabad which is outside the area of the operation of the petitioner society and that another 26 members are found to be residents of other places outside the area of the operation of the petitioner society. It was also alleged that three members who have expired are still being shown as members of the society and that one member has been listed twice. Thus, as against 228 members, 68 members are not entitled to continue. It appears that the said show-cause notice was issued on the basis of the report, dated 12-02-2004, submitted by the three-men-committee, which was appointed to conduct a detailed enquiry into the allegations made by some of the members of the society against the managing committee. On receipt of the said show-cause notice, the petitioner filed a representation on 17-03-2004 requesting the respondents to furnish a copy of the complaint and the report which were referred in the show-cause notice so as to enable it to file a suitable explanation. However, without furnishing the said documents and without affording any further opportunity, the respondent passed a final order of supersession.

Challenging the said order of supersession, dated 18-03-2004, the petitioner filed W.P.No.5416 of 2004. The said writ petition was allowed by this Court by order dated 29-03-2004 holding that the action of the respondent in passing the order of supersession treating the representation of the petitioner dated 17-03-2004, requesting to furnish copies of documents referred in the show-cause notice, as an explanation is clearly illegal and violative of the principles of natural justice. Accordingly, this Court set aside the order of supersession dated 18-03-2004. Since the copies of the documents sought by the managing committee were furnished by the learned Government Pleader, this Court while recoding the same directed the managing committee to submit its explanation within a period of two weeks and thereafter the respondent shall pass appropriate orders after giving the managing

committee an opportunity of being heard, if necessary, and if such request is made by the managing committee.

It is not in dispute that an explanation was submitted by the managing committee on 12-04-2004 and the President of the Society Sri Y.Nageswara Rao as well as the complainant and other parties appeared before the Registrar on 27-04-2004. A further representation was also made by the President Sri Y.Nageswara Rao on 28-04-2004 stating that 37 out of 38 residents of Khairatabad area and 26 non-residents of Chinthal Basthi area and 3 deceased members were removed from the Society in the general body meeting held on 15-03-2004. He also submitted another representation dated 10-05-2004 stating that he has resigned his post and handed over the charge to the Secretary Smt. K.Suguna.

Thereafter, the respondent issued a further show-cause notice dated 11-08-2004 stating that during the verification of the records of the Society, it has been observed that the general body meeting held on 15-03-2004 for removal of 66 members is invalid and fabricated and that the managing committee has tampered the records. It was further alleged that as per the affidavit filed in the writ petition on 22-03-2004 and representations submitted before the Functional Registrar, the members of the society are supposed to be 228, but not 303 and it is clear that the managing committee has tampered and manipulated the records for inclusion of 75 new applicants and concealed the facts and furnished the false information to the High Court as well as to the authorities. Three other allegations were made which relate to the alleged failure on the part of the managing committee to conduct the general body meetings and to conduct the elections to the managing committee as per the provisions of the Act. On the basis of the said alleged irregularities committed in the functioning of the society, under the show-cause notice, dated 11-08-2004, the members of the managing committee were called upon to show-cause as to why the managing committee of petitioner society shall not be superseded under Section 34(1) of the Act within seven days from the date of the notice.

In pursuance of the said notice, an explanation dated 20-08-2004 signed by the Secretary as well as the four Directors of the Managing Committee has been

submitted to the respondent denying all the allegations made in the show-cause notice. The allegation as to tampering and manipulation of the records has been categorically denied and it has been further stated that since the records are under the custody of Excise Authorities, they are not in a position to provide the accurate information and therefore it is necessary for them to peruse the records in order to file an effective explanation. A further request has been made to afford an opportunity of personal hearing before passing any orders so as to enable them to peruse the records and to explain in detail to avoid any ambiguity.

That apart, since the show-cause notice referred to a representation dated 18-05-2004 made by one C. Ramu, it has been specifically mentioned in the explanation that they are not aware the contents of the representations and that the failure to furnish a copy of the said complaint amounts to violation of principles of natural justice.

It is also relevant to note that the petitioner made a further representation dated 24-08-2004 requesting the respondent not to pass any final orders without affording them an opportunity of being heard. The said representation was received by the office of the respondent on 25-08-2004. However, the respondent passed final orders on 26-08-2004 superseding the managing committee of the petitioner society with immediate effect in exercise of the powers vested under Section 34(1) of the Act observing that the explanation dated 20-08-2004 is not convincing and that affording another opportunity of being heard personally is not desirable in view of the thorough examination of the explanation submitted by the managing committee which was found to be not convinced.

The said order dated 26-08-2004 is under challenge in this writ petition.

I have heard the learned Senior Counsel Sri D.Prakash Reddy, appearing for the petitioner and the learned Government Pleader for Prohibition & Excise for the respondent. I have also heard Sri C.V.Mohan Reddy, representing Sri N.Sridhar Reddy, the learned Counsel for the respondents 2 and 3, who got themselves impleaded.

At the outset, a preliminary objection has been raised by the learned Counsel appearing for the respondents that since against the order impugned, an efficacious alternative remedy is available by way of Appeal to the Tribunal under Section 76 of the Act, without exhausting the said alternative remedy, the petitioner cannot maintain this writ petition.

The learned Counsel for the petitioner though raised a dispute as to the forum of appeal, admitted that an alternative remedy of appeal is available under the Statute. However, the learned Counsel for the petitioner has vehemently contended that since the impugned order, on the face of it, is in violation of the principles of natural justice, the availability of the alternative remedy is not a bar for exercising the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India. The learned Counsel further contended that the impugned order is also liable to be set aside in limine since the respondent while exercising the power under Section 34 of the Act, failed to record his opinion that the committee is not functioning properly or failed to comply willfully with any lawful order or direction issued by the Registrar. The submission of the learned Counsel is that since the impugned order is ex facie illegal on the aforesaid two grounds, it is a fit matter for interference by this Court notwithstanding the fact that an alternative remedy is available under the Statute.

On the other hand, the learned Counsel for the respondents, while supporting the order impugned, contended that the members of the managing committee of the petitioner society have been afforded adequate opportunity to meet the allegations made in the show-cause notice and the contention of the petitioner that the impugned order is in violation of the principles of natural justice is without any basis. He submits that Section 34 of the Act does not provide for any opportunity of personal hearing and what all is required is giving the committee an opportunity of making its representation. Thus, according to the learned counsel, the mere fact that the members of the managing committee were not afforded an opportunity of being heard personally is immaterial. He contended that in the explanation dated 20-08-2004 all the allegations made against the Managing Committee have been

explained in detail and the request that the copies of the complaints and representations may be furnished to file a better explanation is only a plea to gain time and to drag on the proceedings and therefore the respondent is justified in passing the final order holding that affording another opportunity of being heard is not desirable.

It is true that where a remedy of appeal is available under the Statute, resort must be had to that statutory remedy of appeal before seeking the discretionary remedy under Article 226 of the Constitution of India. However, the law is well settled that the existence of an alternative remedy is not an absolute bar to grant the relief under Article 226. As held by the Apex Court and this Court in a catena of decisions the alternative remedy will not operate as a bar in at least three contingencies viz., where the writ petition has been filed for the enforcement of any of the fundamental rights or where there has been a violation of the principles of natural justice or where the order or proceedings are wholly without jurisdiction or vires of an act is challenged. { vide WHIRLPOOL CORPORATION VS. REGISTRAR OF TRADE MARKS (1998(8) SCC 1) }

The specific plea of the petitioner is that in spite of the repeated requests made by the petitioner, the respondent failed to afford an opportunity of being heard and therefore the impugned order is in violation of the principles of natural justice. It is true that Section 34 of the Act requires that the Committee should be given an opportunity of making representation and it does not expressly provide for personal hearing. However, the question whether a person can claim a right to be heard even where the statute is silent on that point, always depends on the facts and circumstances of the case and each case has to be decided on its merits.

In the case on hand, the allegation in the first show-cause notice dated 04-03-2004 was that the managing committee of the society has committed irregularities by continuing the individuals who do not belong to the area of the operation of the society as members. The Managing committee submitted its explanation and they were also given a personal hearing. However, a second show-cause notice has been issued making certain new allegations which include tampering and

manipulation of the records. The managing committee, in the explanation, denied the said allegation and stated that since the records are under the custody of the authorities, they are not in a position to provide the accurate information and therefore it is necessary to peruse the records so as to file an effective explanation and requested to afford an opportunity of personal hearing. Having regard to the nature of the allegation, it cannot be said that the request of the petitioner is unreasonable or unjust. The allegation of tampering and manipulation of records by its very nature involves verification of the records and clarification, if any by the party against whom the allegations are made. Hence, when the party concerned denied the allegation and made a request for personal hearing for the purpose of perusal of the records and for explaining certain aspects, without affording such an opportunity, the authority cannot unilaterally take a decision on its own satisfaction. In the circumstances, I am of the view that there is no reason for denying the opportunity of personal hearing as sought by the managing committee and the respondent is not justified in concluding that affording another opportunity of being heard is not desirable.

It is also to be noted that this Court while disposing of W.P.No.5416 of 2004, directed the 1st respondent to pass appropriate orders after giving the managing committee an opportunity of personal hearing, if such request is made by them. In the light of the said order and having regard to the nature of the allegation in the second show-cause notice, dated 11-08-2004, which forms basis for the impugned order of supersession, I am of the view that the respondent ought to have given an opportunity of personal hearing to the members of the managing committee before passing the final order.

In the circumstances, I hold that the impugned order is in violation of the principles of natural justice, and therefore the petitioner is entitled to invoke the jurisdiction under Article 226 of the Constitution of India notwithstanding the alternative remedy available under the Act. Accordingly, without expressing any opinion on merits of the case, the impugned order is set aside with a direction to the respondent to pass appropriate orders afresh in accordance with law after affording an opportunity of personal hearing to the managing committee as sought in their representations dated 20-08-2004 and 24-08-2004. It is made clear that this Court has not expressed

any opinion on any one of the other contentions raised by the parties on merits of the case, and the impugned order is set aside only on the ground that it is in violation of the principles of natural justice. Now, that the matter is remitted back to the respondent for consideration afresh, it is open to the respondent to pass appropriate orders after hearing all the parties concerned.

The writ petition is accordingly disposed of. No costs.

09th September, 2004.

Note: -

Issue operative portion

By wire at party's costs.

(B/o)

Gbs

To

1. The Proh & Excise Superintendent, Cum Functional Registrar Toddy Tappers
Coop. Societies, Hyderabad District, Narayanaguda, Hyderabad.

2.2CCs to G.P. for Prohibition & Excise, High Court Bldgs, Hyderabad(OUT)

3.2CD copies